

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

AP GREEN INDUSTRIES, INC.

and

Cases 9-CA-151564 & -154799

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED-INDUSTRIAL UNION,  
AFL-CIO/CLC LOCAL 2324-05

MOTION OF AP GREEN INDUSTRIES, INC. FOR CONTINUANCE OF TRIAL DATE

Respondent AP Green Industries, Inc. ("AP Green" or "Company"), through new undersigned counsel, hereby moves for a brief continuance of the trial date in this case from March 21, 2016 to April 25, 2016 and for good cause states as follows:

1. Undersigned counsel Messrs. Hayes and Murphy ("Hayes and Murphy") were retained by AP Green on Monday, March 7, 2016 to represent AP Green in the above-referenced trial.
2. The trial involves a plant in Oak Hill, Ohio where the Company manufactures refractory products. The Company and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO/CLC on behalf of its Local 2324-05 ("Union") have been parties to a series of collective bargaining agreements over the years covering the production and maintenance employees at the Oak Hill plant. The most recent collective bargaining

agreement between the Company and the Union was effective from April 16, 2010 through April 15, 2015.

3. On January 22, 2016, the Regional Director for Region 9 on behalf of the General Counsel served an unfair labor practice Complaint, alleging that the Company violated Sections 8(a)(1), (3) and (5) of the Act by proposing a regressive bargaining proposal on May 14, 2015 and thereby converting a lawful lockout that commenced on April 15, 2015 into an unlawful lockout. The Company, through counsel Robert Cottington ("Cottington"), filed its Answer on February 2, 2016, denying the allegations of the Complaint. Thereafter, counsel for the General Counsel, counsel for the Union, and Cottington conferred and jointly agreed on April 12, 2016 as an appropriate date to commence the trial. A scheduling order with that trial date then issued.
4. On February 22, 2016, the National Labor Relations Board filed a Section 10(j) Petition in the United States District Court for the Southern District of Ohio and served a copy of the petition on Cottington, as counsel for the Company. Without any consultation, Counsel for the General Counsel also notified Cottington that the unfair labor practice trial would not commence on April 12, 2016, as previously agreed to and ordered, but would now commence on March 21, 2016 and issued an order to that effect.
5. On February 23, 2016, in response to the Section 10(j) Petition, United States District Court Chief Judge Edmund A. Sargus, Jr. issued an Order to Show Cause and entered the following deadlines as requested by the Board (see Exhibit A hereto):

March 1 – Company's Answer to the Petition

March 8 – Company’s Memorandum in response to the Board’s Memorandum of Points and Authorities in support of Petition

Mar. 15 – NLRB’s Response to Company’s Memorandum

March 24 at 9:00 a.m. - The parties are required to appear for a mediation before the Court and a court assigned private mediator; each party is to be accompanied by officials with full settlement authority

March 25 at 9:00 a.m. – Hearing before Chief Judge Sargus on the petition

6. On February 25, 2016, the Company, through Cottingham, filed a letter motion with the Regional Director of Region 9, requesting that the hearing date for the unfair labor practice trial be reset to April 12, 2016, as originally agreed to and ordered. In support, Cottingham noted the inherent unfairness and prejudice to the Company in shortening the time to prepare for the unfair labor practice trial after the April 12 hearing date had been vetted and agreed to by all parties as well as the substantial impact of now having to prepare for the in-person proceedings before the United States District Court on March 24 and 25, during the same week of the trial. See Exhibit B hereto.
7. On March 4, 2016, the Regional Director denied the Company’s request. See Exhibit C hereto.
8. On March 7, 2016, after entering their appearance, undersigned counsel contacted counsel for the General Counsel and the Union and notified them that they had just been retained to defend the Company in the unfair labor practice trial, while Mr. Cottingham litigates the concurrent 10(j) proceeding as well as any post-hearing issues relating thereto.

9. Undersigned counsel also requested their consent to a continuance of the trial date to April 25, 2016 so that Hayes and Murphy will have adequate time to prepare the Company's case for trial, including meeting with all material Company witnesses, reviewing all relevant bargaining proposals, notes, and correspondence, reviewing all prior submissions, and preparing witnesses and exhibits for trial, while at the same time attending to other existing and prescheduled obligations.
10. For Hayes, these existing and prescheduled obligations in March include in-patient surgery on Monday, March 14, 2016, followed by a multiple-day hospital stay and then restricted travel for at least two weeks. For Murphy, these existing and prescheduled obligations in March include responding as lead counsel to a motion for class certification on March 24, 2016 in *Rosinbaum, et al. v. Flowers Foods, Inc. and Franklin Bakery Company, LLC*, 3:15-cv-581 (D.C. WDNC) and completing discovery in *McCowan v. Engility Holdings, Inc.*, Case No. 2016-SOX-00008 (DOL) by March 30, 2016, including, but not limited to, preparing and defending seven depositions.
11. Unlike Cottingham who is thoroughly familiar with the underlying facts and circumstances of the case and would have been prepared to try the case on April 12, 2016, as originally scheduled, undersigned counsel is not and requests a brief continuance of the trial date from March 21, 2016 to April 25, 2016 so that undersigned counsel may properly learn the facts and circumstances of the case and prepare the Company's case for trial as well as meet their other pre-existing obligations. Alternatively, the April 12, 2016 trial date should be reset so that the Company can be effectively represented by Cottingham at that time.

12. Both counsel for the General Counsel and the Union have notified undersigned counsel that they intend to oppose this Motion

Respectfully submitted,

/s/ Brian E. Hayes  
Brian E. Hayes  
Michael J. Murphy  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
1909 K Street, N.W., Suite 1000  
Washington, D.C. 20006  
Tel: 202.263.0173  
Fax: 202.887.0866  
brian.hayes@ogletreedeakins.com  
michael.murphy@ogletreedeakins.com  
*Counsel for AP Green Industries, Inc.*

Dated: March 8, 2016

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**CERTIFICATE OF SERVICE**

I certify that on March 8, 2016, a copy of the foregoing document with exhibits was *Electronically Filed* as .pdf on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the within Motion has been served on the following individuals by e-mail on March 8, 2016 to the following e-mail addresses: [Zuzana.Murarova@nlrb.gov](mailto:Zuzana.Murarova@nlrb.gov) and [NParker@usw.org](mailto:NParker@usw.org).

/s/ Michael J. Murphy  
Michael J. Murphy

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**GAREY E. LINDSAY,  
REGIONAL DIRECTOR  
OF THE NINTH REGION OF THE  
NATIONAL LABOR RELATIONS BOARD,  
FOR AND ON BEHALF OF THE  
NATIONAL LABOR RELATIONS BOARD**

**Petitioner,**

**v.**

**Civil Action No. 2:16-mc-26  
Chief Judge Edmund A. Sargus, Jr.**

**AP GREEN INDUSTRIES,  
INC.,**

**Respondent.**

**ORDER TO SHOW CAUSE**

The petition of Garey E. Lindsay, Regional Director of the Ninth Region of the National Labor Relations Board, having been filed pursuant to Section 10(j) of the National Labor Relations Act, as amended, praying for issuance of an order directing AP Green Industries, Inc., (Respondent), to show cause, if any there be, why an injunction should not issue enjoining and restraining Respondent from engaging in certain acts and conduct in violation of the Act, pending the final disposition of the matters involved pending before the Board, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent appear before this Court at the United States Courthouse in Columbus, Ohio on **March 25, 2016, at 9:00 a.m.**, and then and there show cause, if any there be, why pending final disposition of the matters involved pending before the National Labor Relations Board, Respondent, its officers, representatives, agents, servants, employees and all persons and




members acting in concert or participation with them should not be enjoined and restrained as prayed in said petition; and

IT IS FURTHER ORDERED that representatives of the Parties shall appear before this Court at the United States Courthouse in Columbus, Ohio on **March 24, 2016, at 9:00 a.m.**, for mediation.

IT IS FURTHER ORDERED that Respondent shall file an answer to the allegations of said petition with the Clerk of this Court and serve a copy thereof on Petitioner within 7 days of the date of this Order. Should Respondent wish to file a memorandum in response to Petitioner's Memorandum of Points and Authorities, such response shall be served and filed within 14 days of the date of this Order. Should Petitioner wish to file a reply, such reply shall be served and filed within 7 days of Respondent's response memorandum, and

IT IS FURTHER ORDERED that service of a copy of this Order to Show Cause together with a copy of the petition and exhibits upon which it is issued be forthwith made upon Respondent in any manner provided by the Rules of Civil Procedure for the United States District Court or by certified mail on or before the **February 24, 2016**, and that proof of such service be filed with the Court.

Date: 2-23-2016

  
Chief Judge Edmund A. Sargus, Jr.

# EXHIBIT B

Robert B. Cottingham  
Direct Dial: 412.297.4677

rcottingham@cohenlaw.com  
Fax: 412.209.1906

February 25, 2016

**VIA ELECTRONIC FILING  
and U.S. FIRST CLASS MAIL**

Garey E. Lindsay  
Regional Director  
National Labor Relations Board, Region 9  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, OH 45202-3271

**Re:   A.P. Green Industries, Inc.  
      NLRB Case Nos. 09-CA-151564 and 09-CA-154799**

Dear Mr. Lindsay:

I am counsel for A.P. Green Industries, Inc. (the "Company") in connection with the above-referenced matters. I am writing to request that the hearing in this matter, which has been unexpectedly moved to March 21, 2016 from the April 12, 2016 hearing date that all parties previously agreed to, be returned to the April 12 date for the reasons discussed below.

On January 22, 2016, the Company and I received the Board's Complaint in these consolidated cases and its Notice of Hearing, scheduling a hearing for February 24, 2016. On behalf of the Company, I requested a postponement of the hearing due to the short notice and significant scheduling conflicts for the Company's witnesses and me as identified in my January 27, 2016 letter to you. I subsequently had several telephone conversations and email exchanges with the Board's Trial Attorney, Zuzana Murarova, in an effort to arrive at a date for the hearing that was mutually convenient for all parties and their representatives. On February 3, 2016, we arrived at April 12, 2016 as an appropriate date for all concerned, and on that same day, you entered an Order scheduling the hearing for April 12, 2016 in Jackson, Ohio.

Following receipt of this Order, the Company's witnesses and I arranged our schedules and planned our preparation for the hearing based on the April 12, 2016 hearing date. Unfortunately, and totally by surprise, I received an email from Trial Attorney, Patrice Tisdale on February 18, 2016, notifying me that the Board had decided to move the hearing date to March 21, 2016, thereby reducing the time to prepare for the hearing by three weeks. The email stated that the hearing was being moved up because the Region had received authorization to seek injunctive relief under Section 10(j) of the Act.

# cohen&grigsby

Garey E. Lindsay  
February 25, 2016  
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The Board's decision to move up the hearing date is quite troubling because the Region certainly knew at the time that it proposed the April 12 hearing date that it was seeking authorization to proceed with petitioning for 10(j) injunctive relief and that if granted that authorization, it would seek to move up the hearing date. Yet, the Region never mentioned any of this in its discussions with me regarding the April 12 hearing date and therefore led me to believe that the April 12 hearing date was a firm date. The Company and I relied on those representations. Out of fairness, the Region should have alerted me to the fact that the Region was awaiting authorization to seek 10(j) injunctive relief and that if given that authorization, the Board intended to move up the hearing date. If the Region had done so, the Company and I would have planned accordingly. Without that information, we lost over two weeks of preparation time from when we were notified on February 3 of the April 12 hearing date to when I was notified on February 18 that the hearing had been moved to March 21. Had we known the Region's actual intentions, we would have used those two weeks to prepare for the ULP hearing.

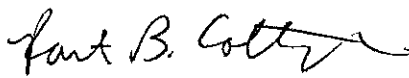
The difficulties created for my client as a result of the Board's decision to move the hearing up to March 21 without fair warning is compounded by the scheduling order requested by the Board in its injunction petition. Pursuant to the Order to Show Cause entered by the Court on Tuesday of this week, at the Board's request, the Company is required to file an answer to the petition by March 1, 2016 and a memorandum in response to the petition by March 8, 2016. The Court further ordered that the parties appear before the Court for a mediation on March 24, 2016 and for a hearing before the Court on March 25, 2016. As such, if the hearing on the Board's complaint remains scheduled for March 21, 2016 the parties will be required to appear before the Court after two and a half days of a hearing that may go much longer. This schedule leaves little or no time for the Company to adequately prepare for the hearing in the ULP case on March 21, 2016. The Company would have prepared for this eventuality if the Region had provided notice that it was awaiting authorization to seek 10(j) relief and that the hearing date may be moved.

Due to the unfair burden placed on the Company by the Board's actions, the Company hereby requests that the hearing in these consolidated cases be rescheduled for April 12, 2016 as the parties agreed upon and as directed in your February 3, 2016 Order.

Thank you for your consideration of this request. If you require any additional information, please contact me.

Very truly yours,

COHEN & GRIGSBY, P.C.

By:   
Robert B. Cottingham

cohen&grigsby

Garey E. Lindsay

February 25, 2016

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cc: Zuzana Murarova, Esq.  
Nancy A. Parker, Esq.

# **EXHIBIT C**

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INTERNATIONAL UNION, AFL-CIO/CLC,  
LOCAL 2324-05

ORDER DENYING RESPONDENT'S  
MOTION TO POSTPONE HEARING

On February 19, 2016, an Order Rescheduling and Changing Time of Hearing issued in the above matter scheduling a hearing to commence on March 21, 2016<sup>1/</sup> and continue on consecutive days thereafter until concluded. On February 25, Respondent filed a motion requesting that the hearing be postponed. The Charging Party has advised the Region that it opposes Respondent's motion to have the hearing date moved.

Respondent notes several reasons for its request for postponement, including that:

(1) after the hearing was first postponed from February 24 to April 12, Respondent arranged its schedule based on that new hearing date and lost valuable preparation time; (2) the Region did not communicate that there was a possibility the hearing would be moved up if it was determined that 10(j) injunctive relief would be sought; (3) a mediation is to be held before the District Court 3 days after the commencement of the ALJ hearing in this matter; and, (4) a 10(j) hearing before the District Court is scheduled for 4 days after the commencement of the hearing.

As Respondent noted, the hearing has already once been postponed. Even with the new March 21 hearing date, the hearing is still scheduled to commence over 3 weeks later than it was

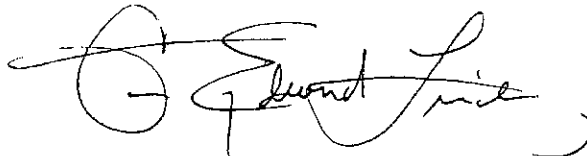
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<sup>1/</sup> Hereinafter all dates occurred in 2016, unless otherwise noted.

initially scheduled. The changed date affects all parties equally, and the Charging Party opposes a postponement. Moreover, 10(j) proceedings are pending warranting expedited handling of this matter. Additionally, nothing in Respondent's motion for a postponement indicates that its attorney or any of its witnesses are unavailable on March 21.

Therefore, pursuant to Section 102.16 of the Board's Rules and Regulations and, in the absence of proper cause shown, in order to effectuate the purposes of the National Labor Relations Act and to avoid unnecessary costs or delay, Respondent's Motion to Postpone Hearing is hereby DENIED.

Dated: March 3, 2016

A handwritten signature in black ink, appearing to read "Garey E. Lindsay", is written over a horizontal line.

Garey E. Lindsay, Regional Director  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271



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LOCAL 2324-05

**AFFIDAVIT OF SERVICE OF ORDER DENYING RESPONDENT'S MOTION TO  
POSTPONE HEARING**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 3, 2016**, I served the above-entitled document(s) by **certified or regular mail** upon the following persons, addressed to them at the following addresses:

David O'Casek , Manager Labor and  
Employees Relations  
AP Green Industries Inc.  
1305 Cherrington Parkway, Suite 100  
Moon Township, PA 15108

**REGULAR MAIL**

Robert B. Cottingham, Esq.  
Cohen & Grigsby, P.C.  
625 Liberty Avenue  
Pittsburgh, PA 15222-3152

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Nancy A. Parker, Assistant General Counsel  
United Steel, Paper and Forestry, Rubber,  
Manufacturing, Energy, Allied-Industrial  
and Service Workers International Union,  
Local 12-591, AFL-CIO/CLC  
60 Boulevard of the Allies, Room 807  
Pittsburgh, PA 15222-1209

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

March 3, 2016

Date

L. Hellrung, Designated Agent of NLRB

Name

Signature